From: Nicolas Ouedraogo
To: Microsoft ATR
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Subject: Microsoft Settlement

As a computer professional working and interacting with Microsoft products for the past 10 years, I have numerous first-hand experiences of the ill-effects of Microsoft's abuses of monopoly powers and predatory business practices on my daily work. Although living and working abroad, these abuses and practices have and still are affecting me personally and professionally, which shows how far-reaching the ill-effects can be.

After closely watching this case, including relevant documents of the trial and numerous commentaries in the press, I believe that the proposed settlement will not achieve its goals and, as an american citizen, I feel compelled to express my concerns about it.

Microsoft's past and present behaviours have already been described at length during the trial, but the ones which have affected me the most can be summed up as:
A) illegally restricting competition in the OS market
B) illegally using its monopoly position in the OS market to enter other markets or restrict competition in other markets

However, the proposed settlement fails to correctly address those two points, and does so in various ways, notably :

- Microsoft's past behaviours have showed how clever it can be in finding and exploiting loopholes in its agreements - the DOJ has a first-hand experience of this (cf. the 1995 consent decree with Microsoft). The proposed settlement is too vaguely worded in this respect, so careful attention should be given to the various means (and their wording) needed to acheive these goals.

- Also of the highest importance, specific means should be provided to guarantee that open source and free software can develop unharmed by Microsoft's actions. By Microsoft's own admission, free software (and particularly the Linux OS) is its biggest competitor, but strangely the proposed settlement's wording of Microsoft's behavioural remedies specifically includes only commercial software developers - thus leaving free software developers, most of whom are individuals or not-for-profit entities, with no rights at all, as though they don't even exist.
Even worse, Section III(J)(2) contains some very strong language against not-for-profits. Specifically, the language says that Microsoft need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business: "...(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..."
The same goes for Section III(D), which deals with disclosure of information

regarding the APIs for incorporating non-Microsoft "middleware", and which gives some rights to commercial concerns only.
This is particularly unfair, because Microsoft's harms have and still are affecting not only businesses, but also the public at large, including individuals and not-for-profit organizations.

So, in my view, any settlement should include, as a bare minimum, the following requirements :

A) To restore competition on the OS market, the proposed settlement should :

1. Require Microsoft to :
   - publish OEM prices for licenses to all version of Windows and its successors.
   - offer different prices for the same product based only on quantity bought. The complete pricelist must be made public and access to the different prices cannot be tied to factors other than quantity.
   - publish the conditions under which it gives access to the source code of any of its OS, and provide such accesses in a non-discriminatory way

These mesures would provide a mean for consumers to make informed choices when selecting computer platforms to buy, prevent Microsoft from illegally using OEMs to raise the barrier to entry in the OS market, and prevent Microsoft from threatening ISVs to deny them access to the source code of its OS.

2. Prevent Microsoft from :
   - refusing to sell licenses of its OS to anyone
   - entering in a bundling agreement or contract which includes a Microsoft OS, with OEMs or resellers
   - using a software-related patent to block or hinder the development and public offering (free of charge or for a cost) of a software competing with Microsoft's products. Microsoft should be required to license, free of charge and in a non-discriminatory way, any software-related patent it owns to any software developer, provided the software using the patent will also be publicly available free of charge. Commercial software using Microsoft-owned patents can be required to license these patents for a reasonnable cost, provided that that cost is published by Microsoft and equally applied in a non-discriminatory way to all commercial vendors.
   - publicly offering (free of charge or for a cost) any hardware device driver without also publicly offering, free of charge, its source code.
   - certifying any hardware as working with Microsoft software, unless the hardware's complete specifications are publicly available free of charge.

These five measures combined would remove a big part of the barrier to entry illegally placed by Microsoft on competing products in the OS market, and prevent future actions by Microsoft to restrict competition, including those from open-source and free software products.
This would also prevent Microsoft from using hardware devices as a mean to

maintain its monopoly position :
- by ensuring that any hardware supported natively by a Microsoft OS can also be supported by any other OS (including open source and free software operating systems like Linux)
- by ensuring that Microsoft cannot use its "seal of approval" to reinforce its monopoly position by helping hardware manufacturers in marketing products for which the specifications are not publicly available.

B) To prevent Microsoft from using its OS monopoly as a way of achieving another monopoly position in another market, the proposed settlement should require Microsoft to :

- publish, free of charge and without any non-disclosure requirement, complete documentation of all interfaces between software components, all communications protocols, and all file formats used in any software publicly offered (free of charge or for a cost) by Microsoft for the past three years, and those publicly offered (free of charge or for a cost) by Microsoft for the next ten years. These documentations for software publicly offered (free of charge or for a cost) by Microsoft for the past three years must be publicly available at most one year after the date the settlement is in effect.
- publicly provide answers, free of charge and in a reasonable time, to all questions raised by anyone regarding any aspect of an interface (as distinguished from implementation techniques) that the published documentation fails to address, and do so for the next ten years.
- make available in a convenient way, the ability to remove any software component that is part of a Microsoft OS (such as Internet Explorer, Windows Media Player, etc..) and replace it with a competing software component.

These three mesures combined would ensure that complete interoperability with Microsoft present and future products becomes possible, thus guaranteeing that fair competition can exist in all software markets in which Microsoft is present. They also address some of the past harms done by Microsoft by requiring it to use some of its ill-gotten gains to provide the public with some means to interoperate with some of its past, still widely in-use software.

I sincerely hope that my concerns about the proposed settlement will be correctly be addressed, and I will watch very closely the outcome the case.

Regards,
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